Unit-14 Legal Aspects of Business-II

1. Limited Liability Partnership

Commencement : LLP is governed by the Limited Liability Partnership Act 2008, which has come into force with effect from April 1, 2009.

Application and Extent : This Act have been enacted to make provisions for the formation and regulation of Limited Liability Partnerships and for matters connected there with or incidental thereto.

The LLP Act, 2008 has 81 sections and 4 schedules

Scope of the Act :

- The First Schedule deals with mutual rights and duties of partners, as well limited liability partnership and its partners where there is absence of formal agreement with respect to them.
- The Second Schedule deals with conversion of a firm into LLP.
- The Third Schedule deals with conversion of a private company into LLP.
- The Fourth Schedule deals with conversion of unlisted public company into LLP.

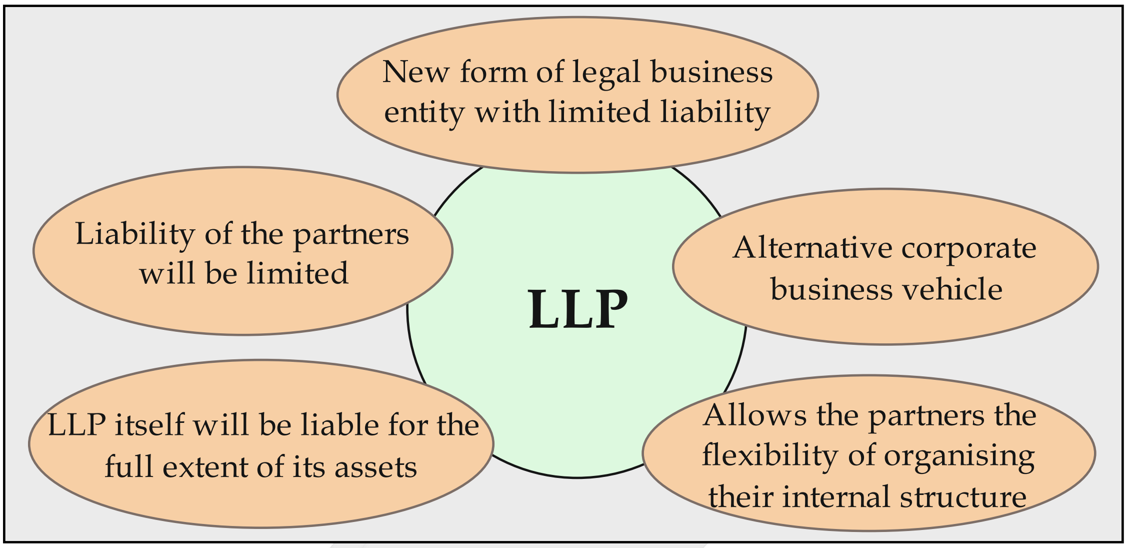
The Indian Partnership Act, 1932 is not applicable to LLP. The Act comprises of 81 section and 4 schedules.

Concept of LLP

Limited Liability Partnership enterprise, the world wide recognized form of business organization, has now been introduced in India by enacting the Limited Liability Partnership Act, 2008. LLP Act got assent of president on 7th January 2009 and notified on 9th January 2009. The provision of LLP came into force on 31st March 2009.

A Limited Liability Partnership, popularly known as LLP combines the advantages of both the Company and Partnership into a single form of organization. Limited Liability Partnership (LLP) is a new corporate form that enables professional knowledge and entrepreneurial skill to combine, organize and operate in an innovative and proficient manner.

It provides an alternative to the traditional partnership firm with unlimited liability. By incorporating an LLP, its members can avail the benefit of limited liability and the flexibility of organizing their internal management on the basis of a mutually arrived agreement, as is the case in a partnership firm. There is no legal limit for the number of maximum members.



Characteristics of an LLP

(1) **LLP is a body corporate :** Section 3 of LLP Act provides that a LLP is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

(2) **Perpetual Succession :** The LLP can continue its existence irrespective of changes in partners. Death, insanity, retirement, or insolvency of partners has no impact on the existence of LLP. It is capable of entering into contracts and holding property in its own name.

(3) **Separate Legal Entity :** The LLP is a separate legal entity, is liable to the full extent of its assets but liability of the partners is limited to their agreed contribution in the LLP. In other words, creditors of LLP shall be the creditors of LLP alone.

(4) **Mutual Agency :** Further, no partner is liable on account of the independent or un-authorized actions of other partners, thus individual partners are shielded from joint liability created by another partner's wrongful business decisions or misconduct. In other words, all partners will be the agents of the LLP alone. No one partner can bind the other partner by his acts.

(5) **LLP Agreement :** Mutual rights and duties of the partners within a LLP are governed by an agreement between the partners. The LLP Act, 2008 provides flexibility to partner to devise the agreement as per their choice. In the absence of any such agreement, the mutual rights and duties shall be governed by the provisions of the LLP Act, 2008.

(6) **Artificial Legal Person :** An LLP is an artificial legal person because it is created by a legal process and is clothed with all rights of an individual. It can do everything which any natural person can do, except of course that, it cannot be sent to jail, cannot take an oath, cannot marry, or get divorce nor can it practice a learned profession like CA or Medicine. An LLP is invisible, intangible, immortal (it can be dissolved by law alone) but not fictitious because it really exists.

(7) **Common Seal :** An LLP being an artificial person can act through its partners and designated partners. LLP may have a common seal, if it decides to have one [Section 14(c)]. Thus, it is not mandatory for a LLP to have a common seal. It shall remain under the custody of some responsible official and it shall be affixed in the presence of at least 2 designated partners of the LLP.

(8) **Limited Liability :** Every partner of a LLP is, for the purpose of the business of LLP, the agent of the LLP, but not of other partners (Section. 26). The liability of the partners will be limited to their agreed contribution in the LLP.

(9) **Management of Business :** The partners in the LLP are entitled to manage the business of LLP. But only the designated partners are responsible for legal compliances.

(10) **Minimum and Maximum number of Partners :** Every LLP shall have atleast two partners and shall also have at least 2 individuals as designated partners, of whom at least one shall be resident in India. There is no maximum limit on the partners in LLP.

(11) **Business for Profit Only :** The essential requirement for forming LLP is carrying on a lawful business with a view to earn profit. Thus, LLP cannot be formed for charitable or non-economic purpose.

(12) **Investigation :** The Central Government shall have powers to investigate the affairs of an LLP by appointment of competence authority for the purpose.

(13) **Compromise or Arrangement :** Any compromise or arrangement including merger and amalgamation of LLPs shall be in accordance with the provisions of the LLP Act, 2008.

(14) **Conversion into LLP :** A firm, private company or an unlisted public company would be allowed to be converted into LLP in accordance with the provisions of LLP Act, 2008.

(15) **E-Filling of Documents :** Every form or application of document required to be led or delivered under the act and rules made thereunder, shall be led in computer readable electronic form on its website www.mca.gov.in and authenticated by a partner or designated partner of LLP by the use of electronic or digital signature.

(16) **Foreign LLPs :** Section 2(1)(m) defines foreign limited liability partnership "as a limited liability partnership formed, incorporated, or registered outside India which established a place of business within India". Foreign LLP can become a partner in an Indian LLP.

Requisites of an LLP

(1) LLP is a body incorporate and a legal entity separate from its partners having perpetual succession, can own assets in its name, sue and be sued.

(2) The partners have the right to manage the business directly, unlike corporate shareholders.

(3) One partner is not responsible or liable for another partner's, misconduct, or negligence.

(4) Minimum of 2 partners and no maximum limit.

(5) Should be 'for profit' business.

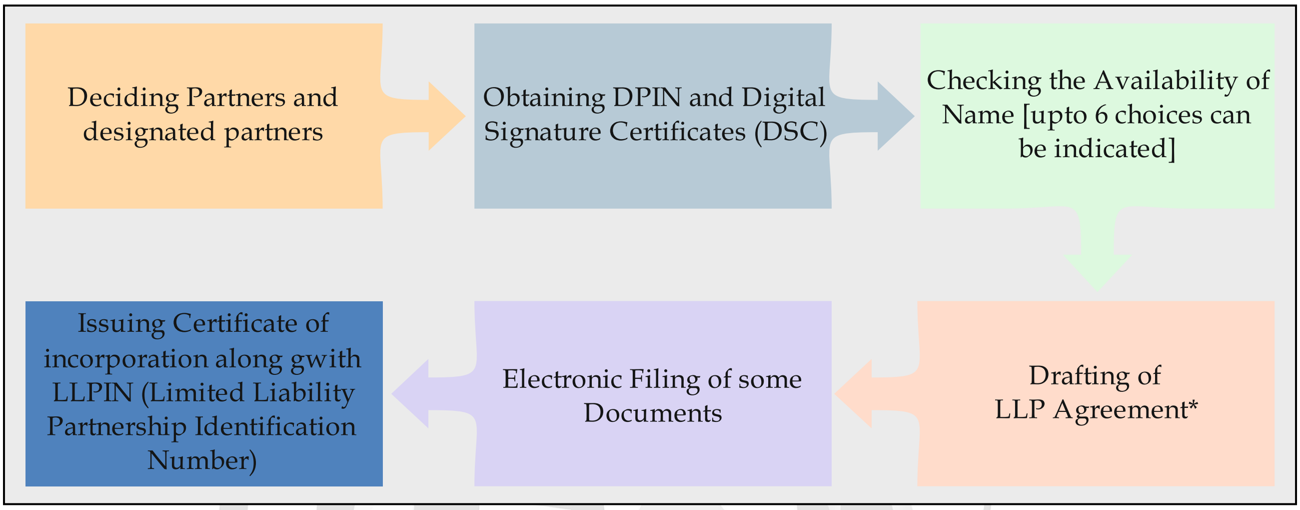
(6) The rights and duties of partners in an LLP, will be governed by the agreement between partners and the partners have the flexibility to devise the agreement as per their choice. The duties and obligations of Designated Partners shall be as provided in the law.

(7) Limited liability of the partners to the extent of their contributions in the LLP. No exposure of personal assets of the partner, except in cases of fraud.

(9) LLP shall maintain annual accounts. However, audit of the accounts is required only if the contribution exceeds Rs. 25 lakh or annual turnover exceeds Rs. 40 lakhs. A statement of accounts and solvency shall be filed by every LLP with the Registrar of Companies (ROC) every year.

How an LLP is Formed?

For forming an LLP, some of the important steps and matters are given below :



Deciding Partners

There should be at least 2 persons (natural or artificial) to form an LLP. In case any Body Corporate is a partner, then he will be required to nominate any person (natural) as its nominee for the purpose of the LLP. Following entities and/or persons can become a partner in the LLP:

(a) Company incorporated in and outside India

(b) LLP incorporated in and outside India

(c) Individuals resident in and outside India.

Designated Partners

Every limited liability partnership shall have at least two designated partners to do all acts under the law who are individuals and at least one of them shall be a resident in India. 'Designated Partner' means a partner who is designated as such in the incorporation documents or who becomes a designated partner by and in accordance with the LLP Agreement.

In case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such body's corporate shall act as designated partners.

Can Become a Partner	Cannot Become a Partner
Individual	Partnership Firm
LLP	Sole Corporation
Foreign LLP	Trade Union
Company	Minor
Foreign Company	Hindu Univided Family (HUF)

Designated Partner Identification Number (DPIN)

Every Designated Partner is required to obtain a DPIN from the Central Government. DPIN is an eight-digit numeric number allotted by the Central Government in order to identify a particular partner and can be obtained by making an online application in Form 7 to Central Government and submitting the physical application along with necessary identity and address proof of the person applying with prescribed fees.

However, if an individual already holds a DIN (Director Identification Number), the same number could be allotted as your DPIN also. For that the users while submitting Form 7 needs to fill their existing DIN No. in the application.

It is not necessary to apply Designated Partner Identification Number every time you are appointed partner in an LLP, once this number is allotted it would be used in all the LLP's in which you will be appointed as partner.

Digital Signature Certificate

All the forms like e Form 1, e Form 2, e Form 3 etc. which are required for the purpose of incorporating the LLP, are filed electronically through the medium of Internet. Since all these forms are required to be signed by the partner of the proposed LLP and as all these forms are to be filed electronically, it is not possible to sign them manually. Therefore, for the purpose of signing these forms, at least one of the Designated Partner of the proposed LLP needs to have a Digital Signature Certificate (DSC).

The Digital Signature Certificate once obtained will be useful in filing various forms which are required to be filed during the course of existence of the LLP with the Registrar of LLP.

Capital Contribution

In case of LLP, there is no concept of any share capital, but every partner is required to contribute towards the LLP in some manner as specified in LLP agreement. The said contribution can be tangible, movable, or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, and other agreements to contribute cash or property, and contracts for services performed or to be performed.

In case the contribution is in intangible form, the value of the same shall be certified by a practising Chartered Accountant or by a practising Cost Accountant or by approved value from the panel maintained by the Central Government. The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

LLP Name

Ideally the name of the LLP should be such which represents the business or activity intended to be carried on by the LLP. LLP should not select similar name or prohibited words.

Registered Office

The Registered office of the LLP is the place where all correspondence related with the LLP would take place, though the LLP can also prescribe any other for the same. A registered office is required for maintaining the statutory records and books of account of LLP. At the time of incorporation, it is necessary to submit proof of ownership or right to use the office as its registered office with the Registrar of LLP.

LLP Agreement

For forming an LLP, there should be agreement between/among the partners.

Contents of LLP Agreement

1. Name of LLP
2. Name & address of Partners & Designated Partners.
3. Form of contribution & interest on contribution
4. Profit sharing ratio
5. Remuneration of Partners
6. Rights & Duties of Partners
7. Proposed Business
8. Rules for governing LLP.

In case no agreement is entered into, the rights and duties as prescribed under Schedule I to the LLP Act shall be applicable. It is possible to amend the LLP Agreement, but every change made in the said agreement must be intimated to the Registrar of Companies.

Management and Administration : The designated partners are primarily responsible for the compliance of the provision of the Act and LLP Agreement.

First Schedule of the LLP Act specifies that every partner may take part in the management of the LLP. Further, it specifies that any matter or issue relating to the LLP shall be decided by a resolution passed by a majority in number of partners.

The LLP agreement offers the flexibility to specify acts, matters or things, if any, which can be done.

- with the consent of all the partners
- with the consent of requisite number or percentage of partners
- with the consent of majority of the partners
- with the consent of the governing board or executive board constituted from amongst the partners, if any.

Name Reservation

- The first step to incorporate Limited Liability Partnership (LLP) is reservation of name of LLP.
- Applicant has to file e-Form 1, for ascertaining availability and reservation of the name of a LLP business.

Incorporate LLP

- After reserving a name, user has to file e-Form 2 for incorporating a new Limited Liability Partnership (LLP).
- e-Form 2 contains the details of LLP proposed to be incorporated, partners'/designated partners' details and constant of the partners/designated partners to act as partners/ designated partners.

LLP Agreement

- Execution of LLP Agreement is mandatory as per Section 23 of the Act.
- LLP Agreement is required to be filed with the registrar in e-Form 3 within 30 days of incorporation of LLP.

Exercise : 1 Review Your Progress

1. *Ministry of Corporate A airs enforced the LLP Act, with effect from :*

(A) 31st March 2008	*(B) 1st April 2008*
(C) 31st March 2009	*(D) 1st April 2009*

2. *Whether partnership law applies to the LLP :*

(A) Yes	*(B) No*

3. *State which of the statement is correct under the Limited Liability Partnership Act, 2008:*

(A) All partners have unlimited liability
(B) All partners have limited liability

Provisions at a Glance : LLPs are governed by the LLP Act, 2008. The key provisions of the LLP Act and the LLP Rules are summarised below :

Applicable Section / Rule	Provision in Brief
Section 5	An individual or body corporate may be a partner in LLP.
Section 6	Every LLP shall have at least two partners.
Section 7(1)	An LLP shall have two designated partners and at least one of them shall be resident in India.
Section 28(1)	Partner is not personally liable, directly or indirectly for an obligation of the limited liability partnership whether arising in contract or otherwise.
Section 30	Unlimited liability of LLP and partners in case of fraud.
Section 31	Concept of whistle blower in LLP, i.e. to reduce or waive any penalty leviable against any partner or employee on the conditions specified therein.
Section 32(1)	Contribution by partners may be tangible, intangible, movable or immovable.
Section 34(2)	Statement of Account and Solvency to be prepared within six months from end of Financial Year.
Section 35(1)	Annual Return must be filed with the Registrar of Companies (ROC) within 60 days of closure of its Financial Year.
Section 60 – 62	Compromise or arrangement between LLP and its creditors or partners.
Section 63	Winding up of LLP – Voluntary or by the Tribunal and its dissolution.
Section 64	Circumstances in which LLP may be wound up by the Tribunal.
Section 69	Late filing of documents with ROC – can be filed upto 300 days from the date within which it should have been filed on payment of fees of Rs. 100 for every day of such delay along with original filing fees.
Schedule I of the LLP Act	Provisions regarding matters relating to mutual rights and duties of partners and LLP and its partners applicable in the absence of any agreement on such matters.
Schedule II of the LLP Act	Conversion of firm into LLP.
Schedule III of the LLP Act	Conversion of private company into LLP.
Schedule IV of the LLP Act	Conversion of unlisted public company into LLP.
Rule 24 of LLP Rules	Every LLP to maintain books of account and they shall be preserved for 8 years.
Rule 24 (8) of LLP Rules	Accounts of LLP must be audited in case contribution/ turnover exceeds 25 Lakhs/40 Lakhs.

Difference between/among a Company, Partnership Firm and a LLP :

Features	Company	Partnership Firm	LLP
Registration	Compulsory registration with the ROC. Certificate of Incorporation is conclusive evidence.	Not compulsory. Unregistered Partnership Firm won't have the ability to sue.	Compulsory registration required with the ROC
Name	At the end of the name word "limited" of the name of a public company, and "private limited" with a private company.	Not specified	Not specified
Capital Contribution	Private company should have a minimum paid up capital of lakh and Rs. 5 lakhs for a public company.	Not specified	Not specified
Legal Entity	A separate legal entity	Not a separate legal entity	A separate legal entity
Liability	Limited to the extent of unpaid capital	Unlimited, can extend to the personal assets of the partners.	Limited to the extent of the contribution to the LLP.
No. of shareholders/ Partners	Minimum of 2. In a private company, maximum of 50 shareholders	2-20 partners	Minimum of 2.
Foreign Nationals as shareholder/ Partner	Foreign nationals can be shareholders.	Foreign nationals cannot form partner ship firm.	Foreign nationals can be partners.
Meetings	Quarterly Board of Directors meeting, annual shareholding meeting is mandatory	Not required	Not required
Annual Return	Annual Accounts and Annual Return to be filed with ROC	No returns to be filed with the Registrar of firms	Annual statement of accounts and solvency & Annual Return has to be field with ROC
Audit	Compulsory, irrespective of share capital and turnover	Compulsory	Required, if the contribution is above 25 Lakhs or if annual turnover is above 40 Lakhs.
How do the bankers view	High creditworthiness, due to stringent compliances and disclosures required	Creditworthiness depends on goodwill and credit worthiness of the partners	Perception is higher compared to that of a partners ship but lesser than a company.
Dissolution	Very procedural. Voluntary or by Order of National Company Law Tribunal	By agreement of the partners, insolvency or by Court Order	Less procedural compared to company. Voluntary or by Order of National Company Law Tribunal
Whistle blowing	No such provision	No such provision	Protection provided to employees and partners who provide useful information during the investigation process.

Advantages of LLP

The first LLP was registered on 2nd April 2009 and till 25th April 2011, 4580 LLPs were registered. This form of organisation offers the following benefits :

1. The process of formation is quite simple as compared to companies and does not involve much formality. Moreover, in terms of cost, the minimum fee of incorporation is as low as of 800 and maximum is of 5600.
2. Just like a Company, LLP is also body corporate, which means it has its own existence as compared to partnership. LLP and its Partners are distinct entities in the eyes of law. LLP is known by its own name and not the name of its partners.
3. An LLP exists as a separate legal entity different from the lives of its partners. Both LLP and persons, who own it, are separate entities and both functions separately. Liability for repayment of debts and lawsuits incurred by the LLP lies on it and not different from the lives of its partners, the owner. Any business with potential for lawsuits should consider LLP form of organisation and it will offer an added layer of protection.
4. LLP has perpetual succession. Notwithstanding any changes in the partners of the LLP, the LLP will remain the same entity with the same privileges, immunities, estates, and possessions. The LLP shall continue to exist till it is wound up in accordance with the provisions of the relevant law.
5. LLP Act 2008 gives an LLP flexibility to manage its own affairs. Partners can decide the way they want to run and manage the LLP, as per the form of LLP Agreement. The LLP Act does not regulate the LLP to large extent rather than allows partners the liberty to manage it as per their agreement.
6. It is easy to join or leave the LLP or otherwise it is easier to transfer the ownership in accordance with the terms of the LLP Agreement.
7. An LLP, as legal entity, is capable of owning its Separate Property and funds. The LLP is the real person in which all the property is vested and by which it is controlled, managed, and disposed off. The property of LLP is not the property of its partners. Therefore, partners cannot make any claim on the property in case of any dispute among themselves.
8. Another main benefit of incorporation is the taxation of an LLP. LLP is taxed at a lower rate as compared to company. Moreover, LLP is also not subject to Dividend Distribution Tax as compared to company, so there will not be any tax while you distribute profit to your partners.
9. Financing a small business-like sole proprietorship or partnership can be difficult at times. An LLP being a regulated entity like company can attract finance from Private Equity Investors, financial institutions etc.
10. As a juristic legal person, an LLP can sue in its name and be sued by others. The partners are not liable to be sued for dues against the LLP.
11. Under LLP, only in case of business, where the annual turnover exceeds Rs. 40 lakhs, or contribution exceeds Rs. 25 lakhs are required to get their accounts audited annually by a chartered accountant. Thus, there is no mandatory audit requirement.

12. In LLP, Partners, unlike partnership, are not agents of the partners and therefore they are not liable for the individual act of other partners, which protects the interest of individual partners.
13. As compared to a private company, the numbers of compliances are on a lesser side in case of LLP.

Disadvantages of LLP

The major disadvantages of Limited Liability Partnership are listed below :

1. An LLP cannot raise funds from public.
2. Any act of the partner without the other may bind the LLP.
3. Under some cases, liability may extend to personal assets of partners.
4. No separation of management from owners.
5. LLP might not be a choice due to certain extraneous reasons. For example, Department of Telecom (DOT) would approve the application for a leased line only for a company. Friends and relatives (Angel investors), and venture capitalists (VC) would be comfortable investing in a company.
6. The framework for incorporating an LLP is in place but currently registrations are centralized at Delhi.